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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,941	01/03/2002	Carolyn Jean Cupp	112701-330	7917

29157 7590 09/02/2005

BELL, BOYD & LLOYD LLC
P. O. BOX 1135
CHICAGO, IL 60690-1135

EXAMINER	
HENDRICKS, KEITH D	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 09/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/037,941	CUPP ET AL.	
	Examiner	Art Unit	
	Keith Hendricks	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 March 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-33* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-33* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 7-12, 18, 20, 25, 27, 28, and 30-33 remain rejected under 35 U.S.C. 102(b) as being anticipated by Collings et al. (EP 0 645 095). The reference and rejection are incorporated as cited in a previous Office action. Applicant's arguments filed March 03, 2005 have been fully considered but they are not persuasive. At page 8 of the response, applicant states "Collings failed to disclose a dried pet food product having a density within the claimed range from about 16.8lbs/ft^3 to about 20lbs/ft^3

Applicant's arguments also state that after performing the proper unit conversions, the calculated density of Collings dried pet food equals 12.2lbs/ft3. This is not deemed persuasive because applicant has failed to show the calculations done to arrive at this density. Applicant has provided no data to support their conclusionary statement, whereas the previous Office action has both clearly addressed this issue and provided logical support for the conclusions therein.

At page 8 of the response, applicant states, "Indeed, Collings is unconcerned with reducing the density and increasing the size of the pet food product to provide a resultant product that can remove more plaque and tartar build-up than similar pet food products. Infact, Collings is directed entirely toward an expanded pet food product having improved resistance to breaking, which teaches away from the presently claimed invention."

This is not deemed persuasive for the reasons of record. The previous office action has both clearly addressed this issue and provided logical support for the conclusion therein. In response to applicant's argument, the fact that applicant may have recognized another advantage which would flow naturally from following the teachings of the prior art cannot be the basis for patentability when the differences would otherwise be obvious, or in the instant case, inherent. Applicant appears to be stating that, although the product of Collings et al. provides improved

resistance to breakage on shipping and handling, this would somehow not translate to improved resistance to breaking upon chewing by a pet. This is not a logical conclusion, and has no basis within the reference or the state of the art at the time the invention was made. Applicant has utilized the phrase "improved dental cleaning properties" in their arguments, which is not found in the claims. In fact, however, applicant's own specification, at the top of page 9, states that "being of a low density, the foam [i.e. claimed product] absorbs tooth pressure without splintering and/or crumbing during the chewing process." Thus, regardless of the source of the external pressure applied to the product, be it a shipping package material or a pet's teeth, the same properties (a) are present and inherent, and (b) would be the result of the same components and overall structure within both the claimed and referenced products.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-6, 13-17, 19, 21-24, 26 and 29 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Collings et al., in view of Hand et al. (US PAT 5,431,927). The references and rejection are incorporated as cited in a previous Office action. Applicant's arguments filed March 03, 2005 have been fully considered but they are not persuasive. At page 9 of the response, applicant states, "Hand is entirely directed toward an expanded, striated structural matrix, which teaches away from Collings (disclosing a non-striated pet food product).

This is not deemed persuasive for the reasons of record. The previous office action has both clearly addressed this issue and provided logical support for the conclusion therein. Applicant's claimed invention is disclosed by Collings et al., save for the specific dimensions recited in the instantly rejected claims. However, the selection of a particular size for a pet food piece would

not have involved an inventive step for one of ordinary skill in the art. There are hundreds of such products available on the market whereby the ordinarily skilled artisan could draw inspiration. In fact, the dimensions provided by Collings et al. differ only in that of thickness, and even then only by a mere 2mm (10 mm disclosed, versus the instantly claimed 12 mm minimum). Applicant would not be entitled to a patent for simply choosing to provide the same pet food product having a thickness of only 2mm more than that of the reference. It is noted that the teachings of Collings et al. allow for modifications to be made, and that the specific dimensions recited are in the examples. Just as applicants are not limited to their examples for support, neither is the reference. The Hand reference is provided to demonstrate that other similar pet food products were well known in the art, and were produced having the same dimensions as instantly claimed. Given this, it would have been obvious to one of ordinary skill in the art to have provided the pet food product of Collings et al. having the instantly claimed dimensions, absent any clear and convincing evidence and/or arguments to the contrary. Applicant has not demonstrated a patentable distinction or criticality to the extra 2mm in thickness. It is noted that this would not be expected to relate to the "improved dental cleaning properties" as applicant alleges, nor would it materially affect the density of the product. Simple design choice of a known product such as striated or non-striated, especially within known standards for similar products as shown by Hand et al., would not provide a patentable invention. This is especially true given the already similar dimensions taught by Collings et al. to those of the claimed invention.

Conclusion

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adepeju Pearse//Keith Hendricks whose telephone number is 571-272-8560//272-1401 The examiner can normally be reached on Monday through Friday, 8.00am - 4.30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Peju Pearse
Art Unit 1761

KEITH HENDRICKS
PRIMARY EXAMINER